

**Testimony of Anne Hier, JD, MFA, Michigan Association for Pure Bred Dogs**  
**House Regulatory Reform Committee**  
**June 3, 2014**  
**Draft 2 Substitute for House Bill No. 5095**

The original HB 5095 created a new entity entitled “large scale commercial dog breeding kennel,” and defined this term as “a facility where more than 15 female intact dogs over the age of 4 months are housed or kept for the purpose of breeding.” However, the substitute now has a more general term, “large scale dog breeding kennel,” with the same definition. By dropping the word “commercial,” this definition sweeps in a significant number of responsible breeders who may occasionally breed a litter and sell puppies for remuneration but do not operate a business enterprise for profit.

**HB 5095 IS A DOG OWNERSHIP LIMIT LAW**

Without any definition of what constitutes a “breeding kennel,” other than an arbitrary number of animals owned, this language change converts the bill into a dog ownership limit law.

**All stakeholders are interested in proper animal welfare. However, under current Michigan law and MDARD directives for kennels, standard of care is utilized, not arbitrary restrictions on numbers of dogs owned.** Indeed, these directives specifically cite there must be sufficient employees to properly care for the animals housed in any particular kennel facility. This can be determined by direct observation of the condition of the animals in question.

**WHAT IS KEPT FOR THE PURPOSE OF BREEDING?**

**Purebred dogs are kept for many purposes, of which breeding may be one of them.** The phrase, “kept for the purpose of breeding,” simply cannot be defined by the mere ownership of an arbitrary number of unaltered animals that are not specifically in an active breeding program. The 2014 Farm Act has directives for USDA/APHIS to define the term

“breeding female,” in regard to kennel licensing, and to clarify that only those female animals capable of reproduction and actively being used in a breeding program should qualify as breeding females. Additionally, Congress has directed USDA/APHIS not to include for regulation those dog breeders whose commercial activity is *de minimus*.

Dogs must be intact to compete in many sanctioned dog shows and field trials. If a dog owner keeps unaltered dogs for competition, or boards or trains dogs for others, yet breeds an occasional litter, it can hardly be claimed that all the dogs are being kept solely for “the purpose of breeding.” In fact, this vague wording has already been litigated in the Sixth Circuit.<sup>1</sup>

### OFFERING ANIMALS TO THE PUBLIC

MAPBD advocates for responsible dog legislation that treats all stakeholders fairly and equally in the marketplace. For example, Page 6, Lines 13-18 state that no dog or cat under the age of 8 weeks old may be sold, exchanged, transferred, or offered for sale to the public by either a pet shop or large-scale dog breeding kennel. MAPBD agrees that from a health and welfare standpoint no puppy under this age should ever be offered to the public. **But, if the issue is animal welfare then this same standard must also be applied to both animal control shelters and animal protection shelters, which are not included in this directive.** One can frequently turn on TV-Channel 7 in Detroit and see 7-week old puppies on offer for adoption by Michigan Humane Society. Indeed, this organization has recently listed puppies as young as 6-weeks old on its website. The word “adopt” or the non-profit status of an organization does not change the fact that a transaction takes place that could be harmful to the health and welfare of underage puppies. This is especially so when the puppy comes from a transient population of random-source dogs which make up the population of all

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<sup>1</sup> O'Neill, et al v. Louisville/Jefferson County Metro Government, et al #10-5699, 2011 U.S. App. (6th Cir.).

animal shelters.

### **IMPORTATION OF DOGS INTO THE STATE**

Page 6, Lines 3-9 reiterate current federal law regarding puppies in interstate commerce. However, MAPBD would like to add an additional clarification that any and all shelter-to- shelter transfers of dogs and puppies from out-of-state entities be properly classified as importations into Michigan. Some Michigan animal protection shelters with reported euthanasia rates as high as 60% of their intake also import significant numbers of animals from out-of-state shelters. Mass interstate shipments of random-source dogs pose a health and safety risk to such a degree that several states have passed legislation to regulate shelter imports.

### **PET HEALTH CERTIFICATES**

Page 8, Lines 20-27 and Page 9, Line 1 appear to instruct that pet shops and large-scale dog breeding kennels must provide pet health certificates for every animal sold. It is not clear if this applies to all animals or only those that have been imported into the state. Remarkably, animal control shelters and animal protection shelters are, once again, exempt from this expensive requirement. Current standard practice for most private sales is to require buyers to take the animal to their own veterinarian within 48 hours of purchase. MAPBD notes this law has always applied to pet shops and might be appropriate for dogs originating in a commercial setting. However, dogs and puppies from random-source, transient shelter populations are considerably more at risk for exposure to communicable diseases than dogs purchased from the private sector.

### **EXTRAORDINARY GOVERNMENT REQUIRED RECORD KEEPING**

The definition of a “large-scale dog breeding kennel” is fatally flawed because it is established by housing or owning an arbitrary number of dogs. Thus, regulation can be

avoided by simply owning one less animal than the definition. Worse, a kennel owner can go over or under this magic number several times in the course of a year simply by having several litters of puppies that are subsequently sold. We are at a loss to find any other laws with such a sliding scale of legality, in which one day a dog owner is subject to regulation and the next day not.

Page 18, Lines 22-26 highlight this absurdity. Owners of so-called, “large-scale dog breeding kennels” would be required to keep and maintain daily written inventories of their dogs. Indeed, Lines 24-26 go a step further and demand the kennel owner – but not pet shops, animal control shelters, or animal protection shelters - keep and maintain a daily inventory of any intact female dogs owned. MAPBD fails to see the compelling government interest demanding that private citizens, who may or may not be commercial entities, be required to keep burdensome daily logs of their property.

Indeed, if a kennel owner has over 15 intact females and is designated a large-scale dog breeding kennel, **then all legal obligation to keep records ends the moment the kennel owner reduces the number of such dogs.** Thus, despite the demand on Page 19, Line 27, and Page 20, Lines 1 and 2, that all such records be made available to the Director upon request, **there is no obligation to do so past the point in time that the kennel was no longer covered under the legal definition.**

Once it becomes clear that regulatory avoidance can be achieved by reducing the numbers of dogs owned, MAPBD has no doubt that future legislators will be told that the magic number needs to be reduced again and again. Such changes will harm responsible dog breeders and make it more difficult for the public to acquire well-bred, healthy purebred dogs. MAPBD is opposed to adoption of this bill as currently written.